

**REMARKS/ARGUMENTS**

Claims 1-6 and 9-27 are pending.

Claims 1-5 and 10 were rejected under 35 U.S.C. 102(e) for allegedly being anticipated by Bachmat et al. (US Patent No. 6,711,649). Claims 6, 8 and 12-17 were rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over Bachmat in view of Eggleston et al. (WO 97/22936). Claims 7, 9 and 11 were rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over Bachmat in view of Motohashi et al. (US Patent No. 5,946,670).

Claims 1 and 12 have been amended. Support for the amendment is provided in claims 7 and 8, and in the specification as originally filed, beginning on page 19, line 4 to page 22, line 2. Claims 18-27 have been appended. Support for the appended claims is provided in the specification as originally filed on page 2, lines 12-20. Claims 7 and 8 have been canceled without prejudice or disclaimer.

Bachmat et al. is directed to load balancing of activities on physical disk storage devices by monitoring reading and writing operations to blocks of contiguous storage locations on the physical disk storage devices.

Eggleston et al. disclose a rate governor to assist clients in maintaining their messaging and expenses within desired limits. *Page 24, lines 12-14*. Other disclosed embodiments include providing session-less and session-oriented communication (*page 4, lines 14-18*), providing for user-definable filter parameters to filter data being transferred (*page 4, lines 26-29*), providing a tool for reviewing filtered data (*page 5, lines 10-12*), and providing a capability for optimized replies to messaging (*page 5, lines 27-29*).

Motohashi et al. disclose a charge management unit in a data switch. The various disclosed embodiments relate to how a terminal is notified of charges incurred for data communication. For example, in a first operation, charge notification is a synchronous process. *Col. 8, lines 24-26*. They disclose a second operation in which charge notification is an asynchronous process. *Col. 8, lines 65-67*. Still third, fourth, and fifth operations are disclosed; see for example, column 9, lines 49-50, column 10, lines 31-37, and column 11, lines 16-28.

Neither reference shows or suggests “using metered accounting if an upper limit value for either the number of accesses per unit of time or for the quantity of data transferred per unit of time is not set.” *Amended claims 1 and 12.* Bachmat et al. disclose load balancing; they do not disclose the use of metered accounting based on an upper limit value as recited in the claims. Eggleston et al. disclose using a governor to assist clients in maintaining their messaging and expenses within desired limits; they do not disclose the use of metered accounting based on an upper limit value as recited in the claims. Motohashi et al. disclose various notification processes. Motohashi et al. disclose that there is fixed charge accounting and quantity-dependent charge accounting (column 1, lines 32-38); however, they do not disclose the use of metered accounting based on an upper limit value as recited in the claims. These references separately or considered together fail to anticipate or render obvious “using metered accounting if an upper limit value for either the number of accesses per unit of time or for the quantity of data transferred per unit of time is not set.”

Neither reference shows or suggests “if said upper limit value is set, then accounting data is generated using fixed accounting when said upper limit value has not been exceeded.” Bachmat et al. disclose load balancing; they do not disclose the use of fixed accounting when an upper limit value has been exceeded. Eggleston et al. disclose using a governor to assist clients in maintaining their messaging and expenses within desired limits; they do not disclose the use of fixed accounting when an upper limit value has been exceeded. Motohashi et al. disclose various notification processes. Motohashi et al. disclose that there is fixed charge accounting and quantity-dependent charge accounting (column 1, lines 32-38); however, they do not disclose the use of fixed accounting when an upper limit value has been exceeded. These references separately or considered together fail to anticipate or render obvious “if said upper limit value is set, then accounting data is generated using fixed accounting when said upper limit value has not been exceeded.”

Neither reference shows or suggests “if said upper limit value is set and an access limit for the number of accesses is not set, then accounting data is generated using metered accounting when that upper limit value has been exceeded.” Bachmat et al. disclose load

balancing; they do not disclose the use of metered accounting when an upper limit value is set and an access limit is not set. Eggleston et al. disclose using a governor to assist clients in maintaining their messaging and expenses within desired limits; they do not disclose the use of metered accounting when an upper limit value is set and an access limit is not set. Motohashi et al. disclose various notification processes. Motohashi et al. disclose that there is fixed charge accounting and quantity-dependent charge accounting (column 1, lines 32-38); however, they do not disclose the use of metered accounting when an upper limit value is set and an access limit is not set. These references separately or considered together fail to anticipate or render obvious “if said upper limit value is set and an access limit for the number of accesses is not set, then accounting data is generated using metered accounting when that upper limit value has been exceeded.”

Neither reference shows or suggests “if said upper limit value is set and said access limit is set, then accounting data is generated using fixed accounting.” Bachmat et al. disclose load balancing; they do not disclose the use of fixed accounting when an upper limit value is set and an access limit is set. Eggleston et al. disclose using a governor to assist clients in maintaining their messaging and expenses within desired limits; they do not disclose the use of fixed accounting when an upper limit value is set and an access limit is set. Motohashi et al. disclose various notification processes. Motohashi et al. disclose that there is fixed charge accounting and quantity-dependent charge accounting (column 1, lines 32-38); however, they do not disclose the use of fixed accounting when an upper limit value is set and an access limit is set. These references separately or considered together fail to anticipate or render obvious “if said upper limit value is set and said access limit is set, then accounting data is generated using fixed accounting.”

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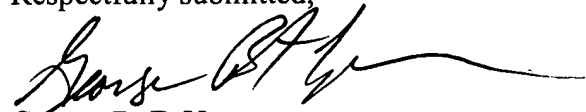
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**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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